



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-17001 (Government contracting-- Construction, installations, or improvements to government real property.)**

Date last reviewed: **August 27, 1999**

Reviewer: **Mark Mullin**

Date current review completed: **April 17, 2003**

Briefly explain the subject matter of the document(s):

**This document explains how the business and occupation (B&O) and sales/use taxes apply to prime contractors and subcontractors who perform certain construction, installation, and improvements to real property of or for the United States, its instrumentalities, or a county or city housing authority created under chapter 35.82 RCW.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	<b>X</b>	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
<b>X</b>		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)



	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **ETA 554 (Sales to the Washington state national guard). This document contains information about sales to the Washington State National Guard, including persons performing construction, alterations, or repairs to real property for the federal government. Although not identified in the previous review of this rule, relevant information from ETA 554 should be incorporated into WAC 458-20-17001.**

Consideration should be given to incorporating information from the following WTDs issued after the initial review of this rule:

- **Det. No. 01-129, 21 WTD 31 (2002) (a limited liability company formed by a private party and the U.S. Navy to construct and manage a housing project for Navy personnel appeals a ruling that construction of the project will not constitute government contracting, and the retail sales tax will apply to the entire gross contract price charged by building contractors).**
- **Det. No. 00-029, 19 WTD 714 (2000) (whether the Department properly imposed use tax on materials installed by a government contractor at a federal facility, or did it improperly tax the sale of tangible personal property to the United States government).**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**This rule can be rewritten and reorganized in a more clear and concise manner. This rule should be rewritten in the Department's current user-friendly format. In addition, consideration should be given to consolidating the information contained in this rule and WAC 458-20-170 into a single rule. This would reduce the need to search multiple rules for information regarding construction activities on public and private property.**



Relevant information contained in the Construction Tax Guide 2002 should be incorporated into the rule.

Information contained in WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee) should be incorporated into the rule.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **None.**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 554 (Sales to the Washington state national guard)**

Court Decisions: **None.**

Board of Tax Appeals Decisions (BTAs):

- ***Caicos Corp. v. Dep't of Rev.*, BTA Docket No. 50371 & 50854 (1998) (whether the use tax on government contractors is measured by the cost to the contractor of items custom built off-site and installed by the contractor on government property).**
- ***Metalfab, Inc. v. Dep't of Rev.*, BTA Docket No. 93-33 (1995) (when a subcontractor purchases materials which become part of a facility installed by the subcontractor on property owned by the United States, is the subcontractor liable for retail sales or use tax).**

Appeals Division Decisions (WTDs):

- **Det. No. 01-129, 21 WTD 31 (2002) (a limited liability company formed by a private party and the U.S. Navy to construct and manage a housing project for Navy personnel appeals a ruling that construction of the project will not constitute government contracting, and the retail sales tax will apply to the entire gross contract price charged by building contractors).**
- **Det. No. 00-029, 19 WTD 714 (2000) (whether the Department properly imposed use tax on materials installed by a government contractor at a federal facility, or did it improperly tax the sale of tangible personal property to the United States government).**
- **Det. No. 99-147, 19 WTD 447 (2000) (a trucking and excavating company seeks a correction of use tax assessments on rental equipment and materials used on government contracting jobs).**
- **Det. No. 85-231A, 1 WTD 309 (1986) (whether taxpayer constructed turnkey projects upon land owned by it, as a speculative builder, or as a prime contractor upon land of or for housing authorities).**

Attorney General Opinions (AGOs): **None.**



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Construction Tax Guide 2002**
- **WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.)**

#### 5. Review Recommendation:

- X              **Amend**
- \_\_\_\_\_        **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- \_\_\_\_\_        **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_        **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**As noted in the previous review, this rule should be amended to include a discussion of RCW 82.04.051 as it relates to government contracting. RCW 82.04.051 defines "services rendered in respect to." The rule should also be amended to incorporate relevant information available in the Construction Tax Guide 2002, ETA 554, and the WTDs identified in this review. Finally, consideration should be made to consolidating the information in this rule with the information in WAC 458-20-170.**

**The previous review recommended that the rule should be amended to address the taxation of persons performing environmental remedial action. However, the special tax treatment for environmental remedial action is scheduled to expire July 1, 2003. Thus, the need to provide information about environmental remedial action in this rule does not appear necessary unless the special tax treatment is extended by the Legislature.**



**6. Manager action:** Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

     1  
  x   2  
     3  
     4